

REMARKS

The following remarks are made in response to the Office Action dated June 4, 2007. Claims 1-7 are pending in the application. Claims 1, 2, and 5-7 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Dyke (U.S. Pat. No. 4,874,090), and Tanaka (U.S. Pat. No. 5,662,639), and claims 3-4 have rejected as being unpatentable under §103(a) in view of Dyke and Rochette (U.S. Pat. No. 3,537,636). Reconsideration and withdrawal of these rejections is respectfully requested.

Independent claim 1 requires a histological specimen comprising a foldable *permeable sheet* having edges, a *permeable target* disposed on the foldable permeable sheet within the edges of the sheet thereby forming extended flap portions that *overlap* the target, and a malleable securing strip attached to the foldable permeable sheet to secure folded flap portions *overlapping* the target. The recited arrangement allows laboratory personnel to retain and process tissue samples with various fluids prior to embedding the tissue sample in paraffin in preparation for microscopic examination. Accordingly, the permeable sheets and target are permeable to processing fluids and/or molten embedding wax but are sufficient to retain the tissue specimen during processing. The specification describes specific embodiments of permeable sheets which may be used. ¶¶ [0018], [0019]. Further, the permeable sheet has flaps that overlap the target. It is submitted that the Dyke reference and the Tanaka reference fail to show any corresponding structure and, therefore, fail to render the subject matter of the claims unpatentable.

The Dyke reference refers to a sterilization pouch used for holding items during sterilization. The first and second sheet-like members 12, 14 are made from a material which is impermeable to microorganisms but permeable to gases such as steam and ethylene oxide. '090 Pat., 3:16-19. The Dyke reference also states that the members 12,14 may be made of a

plastic material which is impermeable to microorganisms. '090 Pat., 3:22-25. The materials forming the sheets of the pouch in the Dyke reference are not permeable as set forth in the claims and therefore would not enable the pouch in the Dyke reference to perform as a histological specimen retaining device. Further, the Dyke reference fails to disclose providing a target with a permeable material. The reference to "indicators" in the Dyke reference does not refer to a target nor a permeable target as set forth in the claims. Because the "indicators" as set forth in the Dyke reference refer to devices that monitor the sterilization process, they do not encompass the subject matter of the recited "target" that locates or supports the specimen.

Further, the claims require that the orientation of the permeable target on the permeable sheet be such that flap portions are formed on the permeable sheet to overlap the target. The Dyke reference fails to show a flap, much less one which overlaps the target. In fact, the Dyke reference teaches away from folding over a flap to form an overlapping structure. In the Dyke reference a sealing member 16 is provided to seal the pouch. No portions of the pouch in the Dyke reference are folded. The sealing member does not secure folded over portions of the pouch but rather seals the opening by bridging across the opening. According to the Dyke reference, providing a sealing member that seals over the opening avoids the issue in the prior art arising from poor alignment from folding over flaps and like structures which results in wrinkles and air channels in the seal. '090 Pat., 3:33-39. For this reason, the Dyke reference also fails to show or suggest providing a malleable securing strip that secures the folded flap portions overlapping the target as recited in claim 1.

For all of these reasons, the Dyke reference fails to render the subject matter of the claims unpatentable and withdrawal of the rejection is respectfully requested.

The Tanaka reference fails to render the subject matter of the claims unpatentable for the similar reasons. The Tanaka reference relates to a sanitary napkin having a liquid impermeable backsheet 3 with wings that are folded back onto a permeable topsheet 2. Adhesive patches are provided on the upside of the folded back portions of the fluid impermeable sheet and a securing strip releasably secures to the adhesive patches to restrain the wings in the folded position. When the napkin is used the securing strip is removed, exposing the adhesive for fixing the napkin.

Being a sanitary napkin, the napkin must absorb and contain fluids. Accordingly, the Tanaka reference has a construction which is entirely different from a histological specimen retaining device that allows processing fluids to flow therethrough. The Tanaka reference shows a napkin with a fluid impermeable backsheet. This does not satisfy the claim recitation of a foldable permeable sheet. To the extent the structure indicated by reference character 2 is considered to be the permeable sheet and the structure indicated by reference character 4 is considered to be the target, the Tanaka reference still fails to anticipate because it fails to show or suggest folding the flaps of the permeable sheet to overlap the target, but rather the Tanaka reference shows a target which is under the permeable sheet (and held in place by the impermeable back sheet 3) and flaps folded back on themselves to create an air gap. *See* Figs. 2 and 3. The Tanaka reference also fails to show or suggest the subject matter of a malleable securing strip attached to the permeable sheet. Rather, in Tanaka, the securing member 11 is releasably secured to adhesive patches located on wings (i.e., folded back portions) of the impermeable sheet 3. The Tanaka reference also fails to show or suggest securing the folded portions to overlap the target. As stated before, the core 4 is arranged below the permeable sheet 2. Further, the Tanaka reference, as well as the Dyke reference, fails to disclose a “malleable

securing strip.” According the specification, a “malleable securing strip” requires that the strip be formable (i.e., metal wire or foil to allow easy closure and clamping, and positive release upon opening of the folded flat portions after processing of the sample). ¶¶ [0026], [0028]. The adhesives used in the Tanaka (and Dyke) references do not satisfy the requirement of a “malleable securing strip.”


For all of these reasons, it is submitted that the Tanaka reference fails to render the subject matter of the claims unpatentable.

The Rochette reference fails to provide any additional teaching that would render the subject matter of the claims unpatentable. The Rochette reference refers to a resealable and reusable bag closure. There would be no reason to combine the teachings of the Rochette reference with that of the Dyke reference. In the Dyke reference, the adhesive backed sealing member 16 seals the pouch to ensure that the contents of the pouch are impermeable to microorganisms. The sealing strip forms a permanent seal at the end. According to the Dyke reference, once the sterilized items are ready for use, the sheet-like members are peeled apart at the chevron shaped ends of the pouch and the items are removed. On the other hand, in the Rochette reference, the wire seal enables the bag to be reclosable and the closure to be repeatedly reused. ‘636 Pat., 1:25-31. There is no reason to provide a reusable and reclosable sealing device as set forth in the Rochette reference on a sterilization pouch as set forth in the Dyke reference that is intended to be used one time. For these reasons, the Rochette reference, whether considered alone or together with the Dyke reference, fails to render the subject matter of the claims unpatentable, and withdrawal of the rejection as to claims 3 and 4 is respectfully requested.

CONCLUSION

In view of the foregoing remarks, applicant respectfully submits that the application is in condition for allowance and notification to that effect is earnestly solicited at the examiner's earliest convenience. The examiner is invited to contact the undersigned by telephone if any other matters require resolution prior to notification of allowance.

Respectfully submitted,
Thompson Coburn LLP

By: 
Matthew J. Himich
Reg. No. 47,650
One US Bank Plaza
St. Louis, MO 63101-1693
(314) 552-6000 (phone)
(314) 552-7000 (fax)

Attorney for applicant